

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:03-CR-3-1-F

UNITED STATES OF AMERICA

v.

TRYONE BATTS,

Defendant.

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ORDER


This matter is before the court on defendant's "Motion for Resentencing – Fairness in Cocaine Sentencing Act" [DE-16]. Although the motion was filed on March 29, 2010, it just has been submitted to the undersigned for ruling.

Batts, moving pro se, cites movement in the United States Congress during 2009, as well as contemporaneous case law, in which the disparity between crack cocaine and powder cocaine sentencing was labeled "egregious" and "unwarranted, and efforts were begun to effect the amendments in the law that in fact occurred in the fall of 2010. Prior to the amendment of 21 U.S.C. § 841 in October 2010, however, federal judges were prevented by law from sentencing below statutory mandatory minimum penalties, although some judges began exercising more discretion in calculating advisory sentencing guideline ranges within those statutory constraints.

Neither the 2007 retroactive crack amendment, nor the 2010 statutory and advisory guideline amendments affect Batts, because he was *not convicted of an offense involving crack*. Rather, Batts pled guilty to possession with the intent to distribute cocaine (powder), and possession of a firearm by a felon. Accordingly, Batts is entitled to no relief. His Motion for Resentencing [DE-16], therefore, is DENIED.

SO ORDERED.

This the 9th day of November, 2010.



JAMES C. FOX
Senior United States District Judge